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April 15, 2005

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: November 23, 2004

Case Number: TSO-0174

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter "the Individual") for continued access authorization. This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's suspended access authorization should be restored. For the reasons detailed below, it is my decision that the Individual's access authorization should be restored.

I. APPLICABLE REGULATIONS

The regulations governing an individual's eligibility for access authorization (also referred to as a security clearance) are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."

An individual is eligible for access authorization if such authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). "Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." *Id.* See generally *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security" test indicates that "security-clearance determinations should err, if the must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9<sup>th</sup> Cir. 1990) (strong presumption against the issuance of a security clearance). Thus, the standard for eligibility for a clearance differs from the standard applicable

to criminal proceedings in which the prosecutor has the burden of proof.

If a question concerning an individual's eligibility for a clearance cannot be resolved, the matter is referred to administrative review. 10 C.F.R. §710.9. The individual has the option of obtaining a decision by the manager at the site based on the existing information or appearing before a hearing officer. *Id.* §710.21(3). Again, the burden is on the individual to present testimony or evidence to demonstrate that he is eligible for access authorization, i.e., that access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." *Id.* §710.27(a).

## II. BACKGROUND

The Individual has been employed by a contractor at a DOE facility in a position that requires him to have an access authorization. In April 2003, while holding the access authorization, the Individual was arrested for driving under the influence of alcohol. DOE Ex. 4.1. In July 2003, a DOE personnel security specialist interviewed the Individual. DOE Ex. 5.1. Based on the interview, the DOE personnel security specialist referred the Individual to a DOE clinical psychologist (the Psychologist) for an evaluation. In August 2003, the Psychologist interviewed the Individual and, in September 2003, issued a report. DOE Ex. 2.2.

In his September 2003 report, the Psychologist determined that the Individual did not meet the criteria for alcohol abuse or dependence set forth in the Diagnostic and Statistical Manual 4<sup>th</sup> Ed., published by the American Psychiatric Association (the DSM-IV) and that the Individual did not have a mental disorder which may cause a significant defect in his judgment or reliability. *Id.* However, the Psychologist concluded that

the Individual uses alcohol habitually to excess and his level of use may cause a significant defect in his judgment or reliability. [The Individual] has developed a high tolerance for alcohol and until recently, had been unaware of the impairment his drinking has created. He has thus been given to driving under the influence. He also has not been attentive to the number of drinks he consumed and thus has relied on only his subjective feeling to gauge his limit.

*Id.* The Psychologist recommended that the Individual receive "a series of alcohol education and information sessions to enhance his awareness and outlook with regards to his drinking." *Id.*

In a subsequent report, issued in December 2003, the Psychologist amended his original report to state that, after further review of his examination of the Individual, he believed that the Individual did meet the DSM-IV criteria for alcohol abuse. DOE Ex. 2.1. The Psychologist stated that the Individual denied alcohol abuse or "substantial concern of others regarding his drinking." *Id.* He stated, however, that the Individual did not keep track of his drinks and used "his subjective feeling to gauge when he has had enough." *Id.* The Psychologist also stated that the Individual appeared to have developed a high tolerance for alcohol, and this minimized the effect of alcohol on him. *Id.*

In April 2004, the DOE notified the Individual that his DUI arrest and the Psychologist's diagnosis constituted derogatory information that created a substantial doubt as to the Individual's continued eligibility for an access authorization under 10 C.F.R. § 710.8(j) (Criterion J). Notification Letter, April 26, 2004. Upon receipt of the Notification Letter, the Individual requested a hearing in this matter. See Individual's Letter, May 14, 2004. The DOE forwarded the request to the Office of Hearings and Appeals (OHA). The OHA Director appointed me to serve as the hearing officer.

A hearing was held in this matter. At the hearing, the Individual represented himself. The Individual offered his own testimony and that of his fiancée and seven current and former co-workers. The local DOE office presented one witness: the Psychologist.

### III. THE HEARING

The Individual did not dispute the matters giving rise to the Notification Letter, i.e. his DUI arrest and the diagnosis of the Psychologist. Instead, he testified that since that time he has stopped consuming alcohol and is now reformed and rehabilitated. The discussion below highlights portions of the hearing testimony relevant to that contention.

A. The Individual

The Individual testified that the legal aspects of his DUI arrest were resolved at a court appearance in September 2003. According to the Individual, in order to get his license reinstated, he was required to complete a 30-hour DUI first-time offenders program. Transcript of Hearing (hereinafter "Tr.") at 22; see also Individual's Ex. F.

The Individual stated that he stopped drinking altogether in March 2004. Tr. at 24. He stated that he enrolled in an intensive, two-week (80 hours) program, and began seeing a counselor through the contractor's Employee Assistance Program (EAP). *Id.* at 24; see also Individual's Ex. I. He stated that he was not currently attending Alcoholics Anonymous (AA) meetings, but that those meetings were an option if he felt stressed or in danger of a relapse. *Id.* at 34. The Individual stated that he felt he had a "good grasp" on his decision not to drink alcohol and that he was well equipped to seek assistance if he felt in danger of a relapse. *Id.* at 36. When asked whether he felt that he was reformed or rehabilitated from alcohol abuse, the Individual responded in the affirmative, stating, "I've made dramatic changes in my lifestyle." *Id.* at 38. He stated that he no longer drank alcohol, he associated with a different group of people, and he had made his friends aware of his abstinence. *Id.* Finally, the Individual acknowledged that there was some alcohol present in his home, stating that he did not drink it and that it was there for his fiancée and guests. *Id.* at 39.

B. The Individual's Fiancée

The Individual's fiancée testified that she had met the Individual about two and one-half years ago and knew him professionally until they began to date last spring. Tr. at 42. She testified that she has never seen him drink. *Id.* at 43. She also stated that she believed the Individual was committed to remaining abstinent from alcohol. *Id.* at 47. When asked why she believed that, the Individual's fiancée responded that, above all, if the Individual says he is going to do something, then he does it. *Id.*

C. The Co-Workers

Several of the Individual's co-workers and former co-workers testified that they did not recall ever seeing the Individual drink in their presence. Tr. at 52, 71, 78, 90. Three other

co-workers, who stated that they also engaged in social activities with the Individual, testified that they had not seen the Individual drink alcohol since March 2004. *Id.* at 59-60, 83, 97. One of those co-workers commented that, since then, during social activities, such as fishing trips or poker nights, the Individual has not consumed alcohol, but rather has consumed non-alcoholic beverages such as soda and water. *Id.* at 61, 63-64. Another co-worker, the Individual's supervisor, stated that he and the Individual had several conversations regarding the Individual's situation. *Id.* at 54. This co-worker also stated that he believed that the Individual had "taken the right steps; he's done what he said he was going to do." *Id.* at 55. One of the Individual's co-workers added that he believed that the suspension of the Individual's clearance had been an "eye-opener" for him and that the Individual had learned a "valuable lesson, albeit the hard way, on responsibility." *Id.* at 102-103.

#### D. The Psychologist

The Psychologist testified about his 2003 evaluation of the Individual. He stated that the Individual was cooperative and truthful during the examination. *Tr.* at 9. He stated that during his assessment of the Individual, he concluded that "[the Individual] was drinking abusively at that time and minimized the potential consequences" of such behavior. *Id.* at 10. The Psychologist also stated that the Individual's score on the global assessment of functioning (GAF) was "right at the cut-off." *Id.* at 12. He stated that the Individual's score "would put a person in the range of having absent or minimal symptoms with regards to [alcohol abuse]." *Id.* The Psychologist stated that he had recommended a period of six months' sobriety in order to demonstrate rehabilitation. *Id.* at 18.

After hearing the testimony of the Individual and the other witnesses at the hearing, the Psychologist testified that the Individual had successfully addressed his alcohol problem. He stated that the Individual "has certainly gone above and beyond anything I had recommended in my evaluation and supplemental evaluations, and that I clearly hear and see that he's made a dramatic lifestyle change." *Id.* at 106. The Psychologist also indicated that the Individual was conducting himself "in a responsible manner." *Id.* at 107. The Psychologist concluded by saying that he did not believe the Individual was in danger of a relapse: "I think he's well in control of his lifestyle and has chosen a lifestyle that doesn't include drinking." *Id.* at 108.

#### IV. APPLICABLE STANDARD

Under Part 710, the DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility." 10 C.F.R. § 710.10(a). After such derogatory information has been received and a question concerning an individual's eligibility to hold an access authorization has been raised, the burden shifts to the individual to prove that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(a).

Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. In considering derogatory information, the DOE considers various factors including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. *Id.* § 710.7(c). The ultimate decision concerning eligibility is a comprehensive, common sense judgment based on a consideration of all relevant information, favorable and unfavorable. *Id.* § 710.7(a).

#### V. FINDINGS OF FACT AND ANALYSIS

The derogatory information concerns alcohol use, which raises a concern under Criterion J. The Individual concedes that he had an alcohol problem but maintains that he is now reformed and rehabilitated. Thus, the only issue to be resolved is whether the Individual has shown adequate evidence of reformation and rehabilitation.

As explained below, the documents, and the testimony at the hearing, strongly support the Individual's assertion that he has successfully addressed his alcohol problem. The witnesses were familiar with the Individual's situation, and their testimony was clear and unequivocal. I believe that they testified honestly and candidly.

The Individual has demonstrated that he has resolved the legal aspects of his alcohol arrest and that he has participated in alcohol education and counseling. The Individual has submitted

relevant documentation, including (i) certificates that he completed a required first offender program, Ex. G, and a voluntary two-week Chemical Dependency Program, Ex. I, and (ii) a letter from his employer's Employee Assistance Program (EAP).

The Individual has further demonstrated that he has abstained from alcohol use, is committed to abstinence, and has a life style consistent with abstinence. The Individual testified that, at the time of the hearing, he had abstained from alcohol consumption for almost a year, see Tr. at 24. A number of witnesses and the EAP counselor corroborated that testimony, see, e.g., *id.* at 52, 59-61, 63-64, 71, 78, 83, 90, 97. The Individual also demonstrated that he is committed to continued abstinence and has made lifestyle changes consistent with that commitment. For example, the Individual testified that he no longer associates with individuals who drink excessively and he has told his friends of his abstinence. *Id.* at 38. Again, a number of witnesses corroborated that testimony. See *id.* at 36, 38, 108.

The Psychologist agrees that the Individual has successfully addressed his alcohol problem. The Psychologist was present for the entire hearing. After the Individual and the other witnesses testified, the Psychologist testified that the Individual "has certainly gone above and beyond anything I had recommended in my evaluation and supplemental evaluations, and I clearly hear and see that he's made a dramatic lifestyle change." *Id.* at 106. The Psychologist also indicated that the Individual was conducting himself "in a responsible manner." *Id.* at 107. The Psychologist concluded by saying that he did not believe the Individual was in danger of a relapse: "I think he's well in control of his lifestyle and has chosen a lifestyle that doesn't include drinking." *Id.* at 108.

In sum, all the testimony at hearing, including the testimony of the Psychologist, convinces me that the Individual has successfully addressed his alcohol problem. Accordingly, I find that the Individual has demonstrated that he is reformed and rehabilitated.

## VI. CONCLUSION

The Individual has resolved the Criterion J concern set forth in the Notification Letter. Therefore, restoring the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national

interest." 10 C.F.R. § 710.7(a). Accordingly, the Individual's access authorization should be restored.

Janet N. Freimuth  
Hearing Officer  
Office of Hearings and Appeals

Date: April 15, 2005